Supreme Court, U.S.
FILED
061367 APR 6 - 2007
IN THE OFFICE OF THE CLERK

No. (1)

SUPREME COURT OF THE UNITED STATES

GYORGY FODOR

Petitioner,

v.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Respondent,

TIME WARNER, INC.

Real Party in Interest.

On Petition For Writ of Certiorari to the

U.S. Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Gyorgy Fodor

9921 Robbins Drive

Beverly Hills, CA 90212

Tel:(310)201-5903

QUESTIONS PRESENTED FOR REVIEW:

1.) Whether Rule 12(b) dismissal can be granted if the assertions of the complaint read with the required liberality would permit the plaintiff to prove that the statute had been tolled?

2.) Whether a complaint must be accepted as true, no matter how improbable the facts alleged are, on "de novo" review by the Circuit Court of Appeals?

3.) Whether the dismissal of Petitioner Fodor's lawsuit at the pleading stage was in denial of Due Process?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is subject to this petition as follows:

Gyorgy Fodor; Petitioner,

Unites States District Court for the Central District of California; Respondent,

Time Warner, Inc.,

Warner Bros. Entertainment; Real Party in Interest.

TABLE OF CONTENTS

OPINIONS BELOW..... 1

JURISDICTION..... 2

CONSTITUTIONAL AND
STATUTORY PROVISIONS
INVOLVED..... 3

STATEMENT OF THE CASE..... 4

REASONS FOR GRANTING THE
PETITION..... 10

CONCLUSION..... 21

INDEX TO APPENDICES

ORDER OF THE COURT OF APPEALS
FOR THE NINTH CIRCUIT.....A-1 to A-4

DISTRICT CORT ORDER.....A-5 to A-26

TABLE OF AUTHORITIES CITED

Cervantes v. City of San Diego (9th Cir. 1993)
5 F.3d 1273, 1275 10
Hinson v. Kings & Spalding
467 U.S. 69, 74 (1984).....12
Swierkiewitz v. Sorema N.A. 534 U.S. 506 ..13
Dyniewitz v, United States (9th Cir. 1984)
742 F.2d 484 486.....14
Neitzke v. Williams (1989)
490 U.S. 319, 328, 329 15
Sanders v. Union Pacific
No. 97-55046v2 (9th Cir. 1999).....17
Bank v. Pitt (11th Cir. 1991)
928 F.2d 1108, 1112 19
DeCarlo v. Fry (2nd. Cir. 1998)
141 F.3d 56, 62 19
Marbury v. Madison 1 Cranch 137 (1803)... 20

IN THE

SUPREME COURT

OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Gyorgy Fodor (hereinafter "Fodor") respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The Order of the United States Court of Appeals for the Ninth Circuit appears at Appendix pages A-1 - A- 4 to the Petition and is unpublished.

The Order of the United States District Court for the Central District of California appears as Appendix pages A-5 to A-26 and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Ninth Circuit decided the above matter was January 10, 2007.

No Motions for reconsideration, modification or clarification of the Memorandum was filed.

The jurisdiction of this court is invoked under 28 U.S.C. # 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT, U.S. CONSTITUTION

No person shall be deprived life, liberty, or property without due process of law;

STATEMENT OF THE CASE

Fodor filed a Copyright Infringement and Unfair Competition lawsuit against Time Warner Inc. and others in 1990 alleging that the corporation stole and copied one of Fodor's movie scripts and breached a confidential business relationship by the same.

Time Warner Inc. defended the lawsuit by forging back-dated corporate documents and fabricated bogus checks and other banking instruments in order to defraud Fodor by claiming that Time Warner Inc. created their infringing work prior to Fodor's wrote his script, therefore, Fodor's lawsuit alleging copying is meritless and must be dismissed.

When Fodor discovered Time Warner Inc.'s criminal tactics U.S. District judge James M. Ideman, having found access and substantial similarity between Fodor's script, and Time Warner Inc's infringing work, denied Time Warner Inc.'s summary judgment motion and set the case for a jury trial.

Time Warner Inc. moved for reconsideration of judge Ideman's order and devised a scheme with the help of judge Ideman's law clerk(s), whereby Time Warner Inc. forged a series of court orders, and to make it appear that these orders were decided by judge Ideman, Time Warner Inc., in cahoots with the law clerk(s), forged the judge's signature on these orders by using the judge's rubber stamped facsimile signature. Then the law clerk(s) caused to file these bogus orders, including an order to dismiss with prejudice Fodor's lawsuit, and an order for attorney's fees of nearly $170.000.00 to be filed as genuine decisions of judge Ideman.

Fodor knew that these orders were forgeries, and simply ignored Time Warner Inc.'s corrupt, criminal attempts to collect the $170.000.00 in attorney's fees and went to the media to publicize this scandalous matter.

By 1994 Time Warner Inc. grew desperate and engaged private investigator Anthony Pellicano to illegally wiretap Fodor's phone(s).

Using information obtained through these illegal wiretappings, in 1994 Time Warner Inc. attempted to murder Fodor by creating a car accident to make it appear Fodor was victim of a drunk driving accident. Next, in 1995, Time Warner Inc. learned through the illegal wiretappings that Fodor and his children received a death from two drug dealers. Time Warner Inc. immediately relayed this information to U.S. District judge Ideman, who by 1995 was actively conspiring with Time Warner Inc. to cover-up widespread criminal misconduct that engulfed judge Ideman's courtroom. Judge Ideman immediately dispatched to Fodor's residence two U.S. marshals who looked like and acted like the two drug dealers who threatened Fodor's life. Time Warner Inc. and judge Ideman knew that Fodor was armed and ready to defend himself and his family in case the drug dealers attempted to carry out their death threats. Thus, Time Warner Inc. and U.S. District judge Ideman hoped that Fodor will get into a gun battle with the U.S. marshals in disguise, thinking that he's

facing the two drug dealers entering forcibly into his residence. One way or another, such confrontation would have resulted in Fodor's demise.

In 2001, Time Warner Inc. tried to blow-up Fodor's car on remote Mulholland Drive in Los Angeles, California by throwing the same or a similar type of hand grenade found in convicted felon, private investigator Anthony Pellicano's possession in retaliation for Fodor depicting on his popular website Time Warner Inc. CEO Gerald M. Levin as a "murderous crook".

In 2005, Time Warner Inc. bribed U.S. District judge Consuelo B. Marshall to secure a favorable ruling in a lawsuit brought by Fodor for the above-mentioned violation of Fodor's rights by Time Warner Inc. and others. In fact, to satisfy her bribers, judge Marshall corruptly falsified the court records in violation of 18 U.S.C. # 1001(a)(1) and (a)(3) to make it appear that Fodor's lawsuit was 8 days over the statute of limitations while in fact Fodor's lawsuit was filed months before the statute of limitation

would have expired.

In a subsequent lawsuit brought by Fodor, Time Warner Inc. and others corruptly conspired with judge Marshall to jail Fodor for criminal contempt for Fodor filing a lawsuit seeking damages for Time Warner Inc. bribing judge Marshall. This corrupt, unlawful scheme was designed, among other crimes, to prevent Fodor to file a timely appeal brief in his prior lawsuit, and to file a timely Writ of Mandamus seeking the disqualification of judge Marshall. This corrupt scheme was aided and abetted by U.S. District judge George Schiavelli who, in the absence of all jurisdiction, denied Fodor's 28 U.S.C. # 455 Motion seeking the disqualification of judge Marshall from presiding over the case in which she had personal knowledge of disputed evidentiary facts.

When these criminal tactics of Time Warner Inc. and others have failed, Time Warner Inc. corruptly influenced judge Marshall to Dismiss Fodor's lawsuit and to declare Fodor vexatious litigant in the absence of all jurisdiction while

Fodor's Writ of Mandamus filed with the Ninth Circuit Court of Appeals was still pending. In fact, judge Marshall, in retaliation for Fodor providing to the FBI and to the Ninth Circuit Court of Appeals information relating to the commission and/or the possible commission of Federal offenses, did dismiss Fodor's lawsuit and declared Fodor Vexatious Litigant in the absence of all jurisdiction, while Fodor's Petition for a Writ of Mandamus was still pending. This criminal conduct of judge Marshall violated 18 U.S.C. # 1506, 18 U.S.C. # 1513(b)(1), and International Law.

On April 28, 2006 Time Warner Inc. subsidiary Warner Bros. Entertainment assaulted Fodor by vandalizing his vehicle and sent a threatening message trying to intimidate and to persuade Fodor not purse further legal remedies. This blatant violation of Fodor's right was consistent with prior threats, attempted murder and intimidation orchestrated by Time Warner Inc.'s and/or their subsidiary, Warner Bros. Entertainment and others.

On January 10, 2007 the Ninth Circuit Court of Appeals affirmed the district court's dismissal order in a thinly veiled attempt to cover-up and whitewash criminal misconduct of fellow judges. Worth noting that one of the judges on the panel, judge Wallace was the chief judge of the ninth circuit and as such, he personally orchestrated the cover-up of former district judge Ideman's criminal misconduct in this matter and coordinated retaliatory actions against Fodor which continues to this day.

REASONS FOR GRANTING THE PETITION

1.) The Rule 12(b) dismissal of Fodor's complaint by the District Court, and the affirmation of the same by the Circuit Court of Appeals on de novo review was inappropriate, and in conflict with precedent setting cases by this court, and the Federal Rules of Civil Procedure. Fodor invasion of privacy and assault claims were dismissed on statute of limitations ground.

However, the Ninth Circuit decided that such dismissal is improper in Cervantes v. City of

San Diego (9th Cir. 1993) stating: "The fact dates alleged in the complaint are beyond the statutory period is not enough to support a Rule 12(b)(6) dismissal. Dismissal can be granted only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute had been tolled" The district court judge recognized this argument and falsified the filing date of Fodor's complaint to make it appear it was beyond the one-year statute of limitations. Here's what the Court of appeal had to say about this: "Although Fodor is correct that the district court order misstates the date he filed his original complaint in this action, this does not save his first claim for invasion of privacy. Fodor alleges that defendants were unlawfully intercepting his private conversations as early as 1995 in order to further a murderous plot, but he does not explain why he would not have this alleged wrongdoing earlier than 2004. First of all, Fodor explained that until the FBI discovered that former private investigator Anthony Pellicano was involved in illegal wiretapping of those were involved in lawsuits with Hollywood studios and

others, Fodor could not have discovered that his phone was among those wiretapped by Mr. Pellicano on behalf of Time Warner Inc. Fodor also explained the manner of discovery, indeed, Fodor learned it from a Los Angeles Times article. Second of all, Fodor had no duty to explain anything further. But Fodor had the right to amend his complaint, which should be freely granted when justice so requires, or let the case proceed to discovery and to find out whether it will survive summary judgment.

In support of the above, this court stated:

..."Rule 8(f) provides that "all pleadings shall be so construed as to do substantial justice."

Given the federal Rules' simplified standard for pleading, "a court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hinson v. Kings & Spalding 467 U.S. 69, 74 (1984). If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e)

before responding.

Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56. The liberal notice pleading of Rule 8(a)is the starting point of a simplified pleading system which was adopted to focus litigation on the merits of a claim. See *Conley, supra* at 48 ("The Federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits") Swierkiewicz v. Sorema N.A. 534 U.S. 506. Furthermore, this court also stated: "Federal courts are particularly liberal in construing "inartful pleading" by pro se litigants. Hughes v. Rowe (1980) 449 U.S. 5, 9. According to the above, it is indisputable that the district court dismissed Fodor's claim by falsifying the filing date of the complaint, and the court of appeals disregarded and/or violated their own prior decision in *Cervantes* and the precedent setting case of Swierkiewtitz v. Sorema

decided by this court.

Therefore, a writ of certiorari should issue with regard to these causes of action.

Furthermore, the court of appeals wrote: "Fodor's seventh through tenth claims are similarly time-barred."

However, pursuant to the arguments set forth above, a Rule 12(b)(6) dismissal is improper on statute of limitations ground. Moreover, the court of appeals created a bogus issue to justify their ruling. Indeed, the discovery rule does not allow accrual of the cause of action until plaintiff knows both the injury and the cause of injury. Dyniewitz v. United States 742 F.2d 484, 486 (9th Cir. 1984). Fodor explained in detail in his complaint, in oral arguments and in his opening brief, that while he knew the injury in 2001 when someone tried to blow-up his car, Fodor discovered the cause of injury only few days before he amended his complaint to include these new causes of action.

In response to this, the court of appeals created a bogus issue in regard to the "defendant identity",

which Fodor could not have discovered before he discovered the cause of the injury. Therefore, these causes of actions are well within the statute of limitations, and a writ of certiorari should issue with regard to cause of actions seventh through tenth.

Furthermore, the court of appeals stated: "Fodor also contends that his his third claim for wiretapping should not be time barred because he acted with "reasonable diligence", but the court was not required to accept his conclusory statement". However, this is what this court stated about this issue: "The sole issue raised by a Rule 12(b)(6) motion is whether the facts pleaded would, if established, support a valid claim for relief. Thus, no matter how improbable the facts alleged are, they must be accepted as true for purposes of the motion. Neitzke v. Williams (1989) 490 U.S. 319, 328-329.

Therefore, the court of appeals was required to accept Fodor's statements as true.

2.) Moreover, the court of appeals must accept as true Fodor's arguments and statements as

true in regard to his challenge to the district court's application of collateral estoppel.

The issue here involved Fodor's allegation that the district court's order dismissing Fodor's Copyright Infringement case was void thus not subject to collateral estoppel.

Fodor marshaled the following evidence in support of his assertions:

A.) A senior executive of defendant corporation admitted to Fodor that the said dismissal order was not decided by judge Ideman, but defendant Warner Bros. Entertainment.

B.) Judge Ideman admitted to chief judge Wallace during a judicial misconduct investigation that he (judge Ideman) did not decide the dismissal order of Fodor's Copyright Infringement action.

C.) Based on this evidence it is mandated by law that said orders of dismissal are nul and void.

D.) It is also well established that facts in Fodor's complaint in the instant action must be accepted as true, either by the district court and/or by the court of appeals on de novo review.

Nevertheless, the court of appeals ruled:

"Fodor's challenge to the district court's application of collateral estoppel to the remaining claims is not persuasive." So how's the truth can be "not persuasive"? The answer is: judicial corruption.

3.) Why the law was not followed by both courts? Because Judge Wallace who was a member of the panel deciding Fodor's appeal was also the chief judge of the ninth circuit in the early 90's investigating Fodor's judicial misconduct complaint against judge Ideman.

Indeed, it was chief judge Wallace who decided to orchestrate a cover-up and whitewash the rampant corruption that engulfed former district judge Ideman's courtroom.

(The widespread corruption in judge Ideman's courtroom was clearly spelled-out in Sanders v. Union Pacific No. 97-55046v2 (9th Cir. 1999) decided by an en banc panel of the ninth circuit.)

Furthermore, Judge Marshall who presided over the instant action was also an active player in

that cover-up which then culminated in judge Ideman sending two U.S. Marshals to ambush and murder Fodor based on the information defendants obtained by the illegal wiretapping of Fodor's phone line(s).

Hardly a surprise then that the court of appeals stated: "Finally, the district court did not abuse its discretion by dismissing Fodor's action without a leave to amend, the district court asked Fodor what additional facts he could allege and determined, from his response that amendment would be futile." This statement of the court of appeals is a blatant lie.

In fact, Fodor asked the district court for a to leave to amend his complaint and asked the district judge district judge to specify in a written order what was wrong with the complaint, because Fodor believed that his complaint was timely and well framed.

Furthermore, the dismissal of Fodor's action is in direct conflict with FRCP 15(a) and decisions of the 11th circuit and the 2nd circuit: "FRCP 15(a) severely restricts the court's discretion to dismiss

without leave to amend: "Where a more carefully drafted complaint might state a claim, plaintiff must be given at least one more chance to amend the complaint before the district court dismisses the action with prejudice -- particularly where plaintiff is pro se." Bank v. Pitt (11th Cir. 1991) 928 F2d 1108, 1112; DeCarlo v. Fry (2nd Cir. 1998) 141 F3d 56, 62. Not this plaintiff though. This plaintiff was repeatedly denied the protection of the laws and treated differently from the rest of the plaintiffs in pro se.

All in all, the above cited irregularities in the court of appeals and in the district court, such as the blatant disregard of the governing law, fabrication of irrelevant facts and falsifying the filing dates, constitute a denial of Fodor's right to due process guaranteed by the Fifth Amendment of the U.S. Constitution.

Furthermore, corruptly denying Fodor's access to mechanisms of justice, such as discovery, and a trial by jury violated the governing laws and also violated human rights guaranteed by international law.

This court stated in Marbury v. Madison 1 Cranch 137 (1803): "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of the government is to afford that protection. The government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested right." Petitioner Fodor has suffered several injuries in regard to this matter. Yet judicial corruption bars Fodor to claim the protection of the laws. The district court and the court of appeals must have thought that the government of the United States is a government of men and not of laws when it comes to cover-up judicial corruption and criminal misconduct of fellow judges.

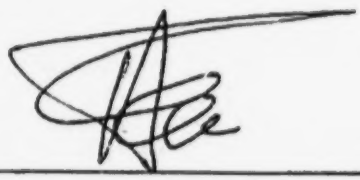
However, this court should remind the district court and the court of appeals that the first duties of the government is to afford the protection of the laws and to furnish remedy to

an injured party.

CONCLUSION

This Petition for Writ of Certiorari must be granted.

Respectfully submitted by:



Gyorgy Fodor

Dated: 04/04/2007

APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED JAN 10, 2007

CATHY A CATTERSON, CLERK

N0. 05-56655

D.C. No. CV-05-00470-CBM

MEMORANDUM

GYORGY FODOR

Plaintiff - Appellant

v.

AOL TIME WARNER, INC.,

Defendants - Appellees

Appeal from the United States District Court

for the Central District of California

Consuelo B. Marshall Chief District Judge, Presiding

Submitted December 21, 2006

Before: GOODWIN, WALLACE and LEAVY Circuit Judges.

Gyorgy Fodor appeals pro se from the district court's order dismissing his action alleging invasion of privacy, wiretapping, unfair competition,

and various other tort and statutory claims. we have jurisdiction under 28 U.S.C. # 1291. We review the district court's dismissal de novo, see Cholla ready mix Inc. v. Civish, 382 F. 3d 969, 973 (9th Cir. 2004), and we may affirm on any basis fairly supported by the record, see Vestar Dev. II v. Gen, Dynamics Corp., 249 F.3d 958, 960 (9th Cir. 2001). We affirm. Contrary to Fodor's contentions, the district court properly dismissed his first and third claims as time-barred. Although Fodor is correct that the district court's order misstates the date he filed his original complaint in this action, this does not save his first claim for invasion of privacy. Fodor alleges that defendants were unlawfully intercepting his private conversations as early as 1995 in order to further a murderous plot, but he does not explain why he could not have discovered this alleged wrongdoing earlier than 2004. See Fox v. Ethicon Endo-Surgery, Inc., 35 cal. 4th 797, 808 (Cal. 2005) ("a plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule

must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence") (internal quotation marks and citations omitted.) Fodor also contends that his third claim for wiretapping should not be time-barred because he acted with "reasonable diligence," but the court was not required to accept his conclusory statement. See Cholla ready Mix, inc., 382 F>3d at 973. Fodor's seventh through tenth claims are similarly time-barred. Fodor's allegation that he did not discover the identity or motives of his alleged assailants until 2005 does not render his claim that someone tried to blow up his car in 2001 timely. see Fox, 35 cal.4th at 807 ("the discovery rule... allows accrual of the cause of action even if plaintiff does not have reason to suspect defendant's identity.") Fodor's challenge to the district court's application of collateral estoppel to the remaining claims is not persuasive. Finally, the district court did not abuse its discretion by dismissing Fodor's action without a leave to amend; at oral argument the

district court asked Fodor what additional facts he could allege and determined, from his response, that amendment would be futile. See Gompper v. VISX, Inc., 298 F3d 893, 898 (9th Cir. 2002) Fodor's remaining actions are without merit. AFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

No. CV 05-470 CBM (PJWx)

Filed OCT. 11, 2005

GYORGY FODOR

Plaintiff

v.

TIME WARNER INC.

WARNER BROS. ENTERTAINMENT

and DOES 1 THROUGH 10

Defendants

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, OVERRULING PLAINTIFF'S OBJECTION TO DEFENDANTS' EVIDENCE AND DENYING PLAINTIFF'S MOTION TO STRIKE.

The matter before the court, the Honorable Consuelo B. Marshall, United States District judge, presiding, is Defendants' Motion to Dismiss Plaintiff's First Amended complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failing tp state a claim

upon which relief can be granted. Also before the Court is "Plaintiff's Objection to Defendants' Evidence and Motion to Strike."

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. # 1332.

BACKGROUND AND PROCEDURAL HISTORY

On March 28, 2005, Plaintiff filed the present action, which sets forth eighteen causes of action, including allegations of tortious conduct, conspiracy, violations of civil rights statutes and unfair business practices. There is a long history between the parties. Plaintiff has filed at least two other lawsuits against defendants, including a lawsuit in 1990 for copyright infringement, which appears to form the basis, at least in part for the later suits.

On February 14, 2005, Defendants filed a motion to dismiss Plaintiff's original complaint arguing that Plaintiff's claims are barred by the statute of limitations, barred by collateral estoppel and fail to state a claim upon which relief can be granted. In response, Plaintiff filed a First Amended

complaint ("FAC"). Defendants then filed the present motion to dismiss Plaintiff's FAC based on the same arguments that were set forth in the first motion to dismiss. A timely opposition and reply were filed. The parties appeared before the Court for oral argument on August 15, 2005.

STANDARD OF LAW

Fed R. Civ. P. 12(b)(6) permits defendants to seek dismissal of a complaint that "fails to state a claim upon which relief can be granted". A motion to dismiss for failure to state claim must be denied unless it appears that the plaintiff can can prove no set of facts that would entitle him to relief. See Conley v. Gibson 355 U.S. 41, 45-46 (1957) Jenkins v. Commonwealth Land titles Ins. Col, 95 F.3d 791, 796-97 (9th Cir. 1996). Dismissal is appropriate if the plaintiff fails to assert a cognizable legal theory or to allege sufficient facts under a cognizable legal theory or to allege sufficient facts under a cognizable legal theory, See Balistiery v. Pacific Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). All material factual allegations in the

complaint are assumed to be true and construed in the light most favorable to the plaintiff. See Cooper v. Pickett, 137 F.#d 616, 622 (9th Cir. 1997) However, the court is not bound to assume the truth of legal conclusions merely because they are stated in the form of factual allegations. See W. Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1980) In ruling on a 12(b)(6) motion, a court generally cannot consider material outside of the complaint. See Branch v. Tunnell 14, F.3d 449, 453 (9th Cir. 1994). However, a court may properly look beyond the complaint to matters of public record and doing so does not convert a Rule 12(b)(6) motion to one of summary judgment. Mack v. South Bay Beer Distributors, 198 F.2d 1279, 1282 (9th Cir. 1986) If the court dismisses the complaint, it must decide whether to grant leave to amend. leave to amend is denied only if it is clear that amendment would be futile, and "that the deficiencies of the complaint could not be cured by the amendment." Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)

DISCUSSION

1. COLLATERAL ESTOPPEL - ISSUE PRECLUSION

The doctrine of issue preclusion prevents relitigation of all issues of fact or law that were actually litigated and necessarily decided in a prior proceeding. Robi v. Five Platters, Inc., 838 F.2d 318, 322 (9th Cir. 1988) (citations omitted). Three factors must be considered before applying issue preclusion: (1) the issue at stake must be identical to the one alleged in prior litigation; (2) the issue must have been actually litigated and lost in the prior litigation by the party against whom the preclusion is asserted, and (3) the determination of the issue in the prior litigation must have been critical and necessary part of the judgment in the earlier action. McQuillon v. Schwartzenegger, 369 F.#d 10911096 (9th Cir. 2004). Plaintiff here has brought at least two other lawsuits against Time Warner and other defendants based on allegations of copyright violation. See Defendants' Request for judicial notice ("Defs. RJN") (documents filed in cases Fodor v. Time Warner, Inc., CV90-2203JMI (C.D. Cal. filed may 2, 1990) and Fodor v. AOL

Time Warner, Inc., CV01-3803 DDP (C.D. Cal. filed April 26, 2001)

Plaintiff's 2001 lawsuit was based on the Racketeer and Corrupt Organizations Act ('RICO") and alleged that the Defendants violated 18 U.S.C. # 1341 (mail fraud), 18 U.S.C. # 1503 (influencing officer), 18 U.S.C. # 1513 (retaliation against a witness or victim), and 18 U.S.C. # 241 Conspiracy against rights. These claims were based on Plaintiff's allegations of a scheme between Time Warner and the honorable District Court Judge james M. Ideman to protect Time Warner and the other defendants from Plaintiff's copyright claims, and to fraudulently issue decisions in Plaintiff's 1990 lawsuit, including an award of approximately $170,000 in attorney's fees to the defendants. See RJN, ex. 3 (Fodor, CV01-3803, Compl. at 1). Plaintiff also alleged a conspiracy to have U.S. Marshalls sent to Plaintiff's home to investigate him and to attempt to murder him. ID. This case was dismissed without leave to amend based on statute of limitations, collateral estoppel and

judicial immunity. Plaintiff's present lawsuit reiterates many of the underlying facts and claims. Plaintiff's Fifth Cause of Action (Obstruction of justice), Sixth Cause of Action (Conspiracy to defraud the United states), Twelfth Cause of action (forgery of judge's signature), and thirteenth cause of action (influencing judicial officer) are based on the allegations of forgery and falsification of court documents by defendants and judge Ideman, claims that are identical to those already litigated and decided against Plaintiff in his 2001 lawsuit. These claims are therefore barred by collateral estoppel. In addition, Plaintiff has already litigated the claim of civil conspiracy based on his claims that defendants conspired with judge Ideman and others to deprive Plaintiff his copyright claims. See RJN, Ex 2 at 9 ("Here, plaintiff's suit is brought on the basis of judge Ideman's alleged conspiracy with Time Warner employee defendant Levin and others to deprive plaintiff of his alleged right to go to trial on his underlying copyright infringement claim. However, plaintiff has raised and lost this issue

on at least for separate occasions..."). Accordingly, the Court GRANTS Defendants' motion to dismiss Plaintiff's Fifth, Sixth, Twelfth, Thirteenth, and Eighteenth Causes of Action because they are barred by collateral estoppel. These claims are dismissed with prejudice.

WHETHER PLAINTIFF'S REMAINING CAUSES OF ACTION STATE CLAIMS UPON WHICH RELIEF MAY BE GRANTED

A. INVASION OF PRIVACY (FIRST CAUSE OF ACTION) AND CIVIL DAMAGES FOR ILLEGAL WIRETAPPING (THIRD CAUSE OF ACTION)

Plaintiff alleges that defendants "engaged in unlawful and malicious wiretapping of plaintiff phone line line(s) and/or interception and disclosure oral communications in violation of law, which invaded Plaintiff privacy interests." FAC at 36(a). plaintiff also seeks civil damages for defendants' alleged wiretapping pursuant to 18 U.S.C. # 2520. Plaintiff alleges that on or about March 20, 2004, he discovered that defendants were involved in a conspiracy to tap his phone based on a Los Angeles Times article.

FAC at 29. Plaintiff alleges that he uncovered evidence on or about February 26, 2005 that defendants wiretapped plaintiff's phone and intercepted his communications in order to set up an alleged ambush against Plaintiff in October 1994. FAC at 31. plaintiff's additional references to wiretapping and interception of oral communications occurred more than five years ago and do not include any reference to recently discovered facts that should toll the statute of limitations. The statute of limitations for invasion of privacy is one year. Cal. Code Civ. P. #340. Wiener v. Superior Court, 58 Cal. App. 3d 525 529 (Cal Ct App. 1976). The discovery rule, under which a cause of action accrues when the plaintiff discovers or should have discovered all facts essential to his or her cause of action, has been applied to suits for accrual damages for violation of the common law right of privacy by eavesdropping. Montalti v. Catanzariti, 191 Cal. App. 3d 96, 99 (Cal App. 1987).

In this case. plaintiff's invasion of privacy claims

are barred by the statute of limitations. His allegation that he discovered Defendant's involvement in the invasion of privacy on March 20, 2004 does not save his claim because this action was filed on march 28, 2005, over one-year since his alleged discovery of defendants' actions. Plaintiff civil wiretapping claim is also barred by the statute of limitaions. A civil action under section 2520 may not be commenced later than two years after the date upon which claimant first has a reasonable opportunity to discover the violation. 18 U.S.C. # 2520(e). Plaintiff does not allege sufficient facts for the Court to determine whether he should have known in the exercise of reasonable diligence of the alleged wiretapping earlier. see Manguso v. Ocenside Unified school dist. , 88 cal. App. 3d 725, 729 Cal ct. App. 1979) (to invoke discovery rule plaintiff must plead: "(1) the time and manner of discovery, and (2) the inability to have made earlier discovery despite reasonable diligence. Mere conclusory assertions that delay in discovery was reasonable are insufficient and will not enable the complaint to withstand general demeurer").

Plaintiff also fails to adequately allege what facts he discovered that tie Defendants to the alleged wiretapping and resulting attacks on Plaintiff's person. Plaintiff only allege that he "found clear and convincing evidence and/or material facts essential to show elements of his cause of action." FAC at 29-31.

Accordingly, the Court finds that Plaintiff's first Cause of action (invasion of privacy) and third cause of action (civil damages for violations of criminal wiretapping statute) are barred by the statute of limitations. Plaintiff has now had two opportunities to provide the Court with further allegations that would support application of discovery rule. Defendants challenged Plaintiff's use of the discovery rule in their first motion to dismiss. The court also asked Plaintiff at the motion hearing what additional facts he would allege to support this claim. Plaintiff stated at the hearing that he discovered through reading the criminal file of Anthony Pellicano that Mr. Pellicano had in his possession plastic explosives without detection agents. Plaintiff also argued that Warner

Brothers imports these types of explosives from England. Plaintiff does not explain how he learned this latter piece of information. Even if the Court were to consider these circumstantial allegations as sufficient to connect Warner Brothers to the plastic explosives that were specifically used in the alleged attack on Plaintiff, Plaintiff still has not explained why he could not have discovered this information earlier. Accordingly, despite two opportunities to set forth additional allegations, Plaintiff has still failed to allege facts that demonstrate he could not have discovered this information sooner and what facts he discovered that showed Defendants were engaged in wiretapping. Therefore, the court dismisses Plaintiff's first and third causes of action with prejudice.

B. PROHIBITED INTERCEPTION AND DISCLOSURE OF WIRE COMMUNICATIONS (SECOND CAUSE OF ACTION), POSSESSION OF PLASTIC EXPLOSIVE NOT CONTAINING DETECTION AGENT (FOURTH CAUSE OF ACTION) CONSPIRACY TO DEFRAUD (SIXTH CAUSE OF ACTION) CONSPIRACY AGAINST

RIGHTS (ELEVENTH CAUSE OF ACTION) FORGERY OF JUDGE'S SIGNATURE (TWELFTH CAUSE OF ACTION), INFLUENCING JUDICIAL OFFICER (THIRTEENTH CAUSE OF ACTION) MAIL FRAUD (FOURTEENTH CAUSE OF ACTION) AND SOLICITATION TO COMMIT A CRIME OF VIOLENCE (SIXTEENTH CAUSE OF ACTION)

Plaintiff asserts nine causes of action based on violations of the criminal code. eight of these causes of action, plaintiff, second, fourth, sixth, eleventh, twelfth, thirteenth, fourteenth, and sixteenth causes of action, allege that violations of these criminal statutes constitute unfair business practices or activity that is prohibited by California's Unfair Business Practices Act.

The Supreme court "rarely implies a private right of action under a criminal statute, and where it has done so there was at least statutory basis for inferring that civil cause of action of some sort lay in favor of someone." Chrysler Corp. v. Brown, 441 U.S. 281, 316 (1979) None of the criminal criminal statutes relied on by plaintiff provide a private right of action. See 18 U.S.C. # 241 (conspiracy against

rights) #371 (conspiracy to defraud the United States), #373 (solicitation to commit a crime of violence), #505 (forgery of judges signature) #842(n) (possession of plastic explosives not containing detection agent) #1314 (mail fraud) #1503 (influencing judicial officer) #1506 (theft or alteration of record or process) #1513 (retaliating against victim or informant) and #2511 (interception and disclosure of wire, oral or electronic communications prohibited).

Accordingly, to the extent Plaintiff seeks to impose direct liability under these statutes against Defendants, the Court GRANTS Defendants' motion to dismiss Plaintiff's second, fourth, fifth, sixth, eleventh, twelfth, thirteenth, fourteenth, and sixteenth causes of action. As Plaintiff cannot as a matter of law state a claim under these statutes, these claims are dismissed with prejudice.

C. UNFAIR COMPETITION (SEVENTEENTH CAUSE OF ACTION)

Plaintiff alleges that "the pattern of unlawful actions described herein were business acts and/or practices of defendants' and generated an illicit profit in the

sum of over one hundred million dollar for defendants." FAC at 52(b). Plaintiff's unfair competition claim is based upon his allegations that he had a business relationship with Defendants who stole his screenplay without compensating him. FAC at 35. Plaintiff also alleges that violations of the various criminal statutes set fort in his second, fourth, sixth, eleventh, twelfth, thirteenth fourteenth, and sixteenth causes of action violate California's Unfair Business Practices Act. Plaintiff further alleges that defendants' unlawful criminal actions of obstruction of justice injured the public. FAC at 52(c). An Unfair Competition Law ("UCL") action "is an equitable action by means of which a plaintiff may recover money or property obtained from the plaintiff or persons represented by plaintiff through unfair or unlawful business practices. It is not an all-purpose substitute for a tort or contract action." Cortez v. Purolator Air Filter Products Co. 23 Cal. 4th 163, 173 (2000). The only non punitive monetary relief available under the Unfair Business Practices Act is the disgorgement of money that has been wrongfully obtained or in the

language of the statute, an order restoring ... money ... which may have been acquired by means of unfair competition." Bank mof the West v. Superior Court, 2 Cal. 4th 1254, 1266 (1992). Defendants argue that Plaintiff's UCL claim is improper, in part, because Plaintiff has not alleged the type of damages that are recoverable under the statute. Plaintiff argues that he has asserted loss of money or property. He argues that the FAC sets forth on page 18, lines 9-13, that Defendants stole and infringed on plaintiff's work. However, unfair competition claims based solely on rights equivalent to those protected by federal copyright laws are preempted. Kodadek v. MTV Networks, 152 F.3d 1209, 1213 (9th Cir. 1988). moreover, to the extent Plaintiff's UCL claim is based upon his allegations of copyright infringement, it is barred by collateral estoppel because that identical claim has already been litigated and decided against plaintiff. See RJN ex. 10 (Fodor v. Time Warner, CV90-2203, order Granting Defendants' Motion for Summary Judgment (C.D. Cal. entered Aug. 31, 1992). Plaintiff also argues that he alleges deprivations

of life and property throughout the complaint page 7, lines 4-9 and 18-23, and page 12, lines 1-5 and 14-19. These allegations are vague and are connected to allegations of physical harm, not allegations of unfair business practices through which Defendants obtained money and property. The only allegation that references money that Defendants allegedly took from Plaintiff is that Defendants forged a court order and granted themselves $170.000 in attorney's fees. FAC at 33. However, as discussed above, Plaintiff is barred from re-litigating that issue based on collateral estoppel. See RJN ex. 2.

Accordingly, the Court GRANTS Defendants motion to dismiss Plaintiff's Seventh cause of action based on California's Unfair Business Practices Act. As Plaintiff is collaterally estopped from re-litigating the underlying copyright claim that forms the core of this claim and cannot as a matter of law state a claim based on his other allegations, the Court dismisses this claim with prejudice.

D. CALIFORNIA CIVIL RIGHTS VIOLATIONS (SEVENTH AND EIGHT CAUSE OF ACTIONS),

ASSAULT (NINTH CAUSE OF ACTION) AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (TENTH CAUSE OF ACTION)

Plaintiff alleges that defendants have violated Cal. Civ. Code ## 51.7 52.1 by using violence, threats of violence and intimidation against Plaintiff motivated by hate and by plaintiff's national origin. FAC at 42-43. Plaintiff's claim for assault and intentional infliction of emotional distress are also based on the acts of intimidation, threats and violence set forth in the FAC FAC at 44-45. Claims under Sections 51.7 and 52.1, and the common law claim for assault and intentional infliction of emotional distress, are governed by the two year statute of limitations for personal injury actions. Cal Code of Civil P 335.1; Averbach v. Vneschheconombank, 280 F. Supp. 2d 945, 958 (N.D. Cal. 2003). In certain tort cases, a claim does not accrue until the plaintiff knows or in the exercise of reasonable diligence should know of both the injury and its cause. Dyniewitz v. United States, 742 F.2d 484, 486 (9th Cir. 1984). "Discovery of the cause of the of one's injury,

however, does not mean knowing who is responsible for it. The 'cause' is known when the immediate physical cause cause of the injury is discovered." ("the burden is then on the plaintiff to ascertain the existence and source of fault within the statutory period...")

The most recent conduct alleged by plaintiff is the attempt to blow up his automobile in 2001. Accordingly, none of the allegedly wrongful acts of Defendants occurred within the two-year statute of limitations for these claims. Moreover, the discovery rule is not applicable in this case because Plaintiff was aware sll the alleged intimidation, violence and threats when they occurred. The fact that he alleges later discovery of Defendants' involvement in some of the conduct alleged in the complaint cannot preserve these claims. Accordingly, the Court GRANTS Defendants' motion to dismiss Plaintiff's Seventh, Eight,, Ninth and tenth Causes of Action. As these claims are barred by their applicable statutes of limitations, no further amendment can cure their defects, therefore, the Court dismisses these

claims with prejudice.

E. DECEIT (FIFTEENTH CAUSE OF ACTION)

Plaintiff alleges that defendants concealed the fact that they illegally wiretapped Plaintiff's phone lines. FAC at 50(a). Plaintiff further alleges that due to the existence of a confidential business relationship between Plaintiff and defendants, defendants were under a duty to disclose to Plaintiff that his phone line was wiretapped, that his oral communications were unlawfully intercepted and disclosed, that they forged court documents and that they intended to murder Plaintiff. FAC at 50(b).

Cal. Civ. Code # 1710 prohibits, inter alia, the "suppression of a fact, by on who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact." An example of duty to disclose is where the parties are in fiduciary relationship. Moe v. Transamerica Title Ins. Co. 21 Cal. App. 3d 289, 306 (Cal. Ct. App. 1971) Plaintiff has not alleged facts to establish that Defendants had a duty to disclose information

to Plaintiff. Moreover, even even if Plaintiff's conclusory allegation that Plaintiff and Defendant had a confidential business relationship that mandated disclosure were sufficient, Plaintiff has not alleged that this relationship existed at the time of Defendants' alleged failure to disclose the information to Plaintif or that this failure to disclose happened within the two-year applicable statute of limitations. Ventura County Nat. Bank v. Macker, 49 cal. App. 4th 1528 1530-31 Cal. Ct. App. 1966) (two-year statute of limitations for claims pursuant to Cal. Civ. Code # 1710). Plaintiff has had two opportunities to cure these defects in his deceit claim. Defendants raised these issues in their first motion to dismiss before Plaintiff filed his FAC. The Court also asked Plaintiff at the motion hearing what additional facts he would allege and Plaintiff failed to state any facts that would address the problems identified by the Court. Plaintiff only raised an alleged confidential business relationship that he asserts existed in 1995 when he gave a second script to warner Brothers through a friend of his who

is a senior executive there. Even if this submission of a script through a friend qualified as a confidential business relationship, it existed approximately ten years prior to the filing of this complaint.

Accordingly, the court GRANTS Defendants' motion to dismiss Plaintiff's Fifteenth Cause of action for deceit. As Plaintiff has failed to cure the defects of this claim despite two opportunities to do so, the Court dismisses the claim with prejudice.

CONCLUSION

Accordingly, the Court GRANTS Defendants' motion to dismiss in its entirety and and dismisses Plaintiff's First Amended Complaint with prejudice.

IT IS SO ORDERED.

DATED: October 7, 2005

CONSUELO B. MARSHALL

United states District Judge